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Kucinich Secures SEC Promise to Widen Investigation into Additional Potential Securities Violations at Bank of America

Washington D.C. (December 11, 2009) – During the fifth hearing of a year-long investigation of Bank of America's acquisition of Merrill Lynch and the resulting $20 billion federal bailout, Domestic Policy Subcommittee Chairman Dennis Kucinich (D-OH) today secured assurance that the Securities and Exchange Commission (SEC) will expand its existing investigation into potential securities violations at Bank of America.

"Our investigation showed that Bank of America and its lawyers, through negligence and recklessness, withheld important information from shareholders about mounting losses at Merrill Lynch before the shareholder vote on the merger. Today, the SEC announced that they will expand their existing enforcement efforts against Bank of America to include the evidence unearthed in the Subcommittee's investigation," said Kucinich.

The Subcommittee reviewed over 400,000 pages of documents and interviewed key players at Bank of America, Merrill Lynch and the law firm of Wachtell, Lipton, Rosen & Katz. At issue is a December 5, 2008 shareholder vote to approve the merger between Bank of America and Merrill Lynch. Only two weeks after shareholders approved the private deal, Bank of America approached the U.S. government for assistance, and ultimately received a $20 billion federal bailout.

The Domestic Policy Subcommittee's investigation found that:

- Bank of America unreasonably and negligently relied on an internal Fourth Quarter '08 forecast, created by Merrill Lynch, that omitted any forecast of how the CDOs, CDS and other toxic assets would perform during the quarter.

- The former Merrill CFO admitted that this forecast was not, in fact, a valid forecast.

- Bank of America knew at the time that the forecast was of "questionable validity."

- However, Bank of America did not do any actual financial analysis to make up for the Merrill omissions. Instead, Bank of America merely pulled a number out of thin air, which was recorded on the forecast as the "gut" feeling of Neil Cotty, Bank of America's Chief Accounting Officer. Bank of America simply created an assumption that Merrill Lynch's illiquid assets would almost break even for November, thereby spreading October's bad results over two months.

- The attorneys at Bank of America and at Wachtell, Lipton recklessly did not question this financial information. They advised Bank of America not to make further disclosures to its shareholders, based on the deficient forecast and the "gut" feeling.

In the absence of updated information, known or knowable by Bank of America before the shareholder vote, shareholders inaccurately believed that Merrill Lynch was losing money at a rate that was less than half the actual figure. Merrill Lynch ultimately lost over $21 billion in the Fourth Quarter '08.

Testifying before a joint hearing of the Domestic Policy Subcommittee and the Oversight and Government Reform Committee, Chaired by Congressman Edolphus Towns (D-NY), Mr. Robert Khuzami, the Director of the Division of Enforcement at the SEC, today agreed that SEC would investigate the potential violations.

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